REMARKS

Claims 1-6 were filed on January 16, 2004. In the Office Action mailed on December 12, 2005, the Examiner rejected Claims 1-6 under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner also rejected Claims 1-6 under 35 U.S.C. §103(a) as being obvious over Applicant's Admitted Prior Art in Figures 1-4B of the Application ("AAPA") in view of U.S. Patent No. 4,614,359 issued to Lundin et al. ("the Lundin '359 Patent"), and also as being obvious over AAPA in view of AU 657128, issued by the Australian Patent Office to Neville John Withers ("the AU '128 Patent").

Applicant has considered the Office Action and has amended the claims. Specifically, based upon these amendments and the following remarks, Applicant respectfully submits that the claims remaining in the application, i.e. Claims 1-6, are in condition for allowance.

CLAIM REJECTIONS UNDER 35 U.S.C. §112.

The Examiner rejected claims 1-6 under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. First, the Examiner stated that in Claim 1, line 1, and throughout the claims, there is claimed an "axle/suspension" and that the "/" is unclear. The Examiner suggested that the arrangement should be claimed without a "/". (Office Action, at page 2.) Applicant respectfully submits that the use of "/" is proper.

More particularly, Applicant notes that the Assignee of the instant application is also the Assignee of many patent applications that have been filed for a number of years around the world utilizing the term "axle/suspension system." Applicant strongly believes that this term best

describes the vehicle components to which it refers, which are often marketed as an integrated product, and unequivocally means and is intended to mean by Applicant an axle and a suspension combination. Applicant's specification and drawings clearly support this meaning. (See, for example, on page 1 at lines 15-18; page 3, lines 28-33 and corresponding figures 6 and 7A; page 4, line 32 – page 5, line 4; page 5, line 33 – page 6, line 3). Moreover, "axle/suspension system" is a term of art commonly used in the heavy-duty vehicle industry to describe a structure integrating an axle and suspension assemblies, and is familiar to those of ordinary skill in the art as referring to the same. As provided in M.P.E.P. § 2173.01, Applicant is entitled to be his own lexicographer, and "a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought." Applicant has acted as his own lexicographer, which is supported by the clear statement herein of exactly what the term "axle/suspension system" means, by its consistent use under that meaning throughout the specification and drawings, and by its common usage in the trade consistent with such meaning. Therefore, Applicant respectfully submits that the rejection should be withdrawn.

Second, the Examiner stated that lines 1-3 of Claim 6 were unclear. Specifically, the Examiner stated that the recitation of the bolt movement means as a bolt is unclear, and that the recitation of the bolt movement means as a vertical bolt is also unclear. The Examiner went on to state that the recitation of "said pivot bolt" in lines 3 and 4 lacks antecedent basis, and also that it is unclear if there is a second bolt recited in Claim 6.

Applicant has amended Claim 1 to clarify that the bolt recited therein is a pivot bolt, thereby providing antecedent basis for the pivot bolt recited in Claim 6. In addition, Applicant has amended Claim 6 to clarify that the pivot bolt movement means is a second bolt that is

vertically disposed. Applicant respectfully submits that, based upon these amendments, Claim 6 is in condition for allowance.

CLAIM REJECTIONS UNDER 35 U.S.C. §103.

Claims 1-6 Are Not Obvious Over AAPA in View of the Lundin '359 Patent.

The Examiner has rejected Claims 1-6 under 35 U.S.C. §103(a) as obvious over the AAPA in view of the Lundin '359 Patent. Applicant respectfully submits that the recited elements of Claims 1-6 are not taught or even suggested, alone or in combination, by AAPA or the Lundin '359 Patent.

All of the words recited in a claim must be taught by the cited references for an obviousness determination to be valid. *In re Wilson,* 424 F.2d 1382, 165 U.S.P.Q. 494 (C.C.P.A. 1970). Moreover, when a reference teaches away from the claimed invention, the reference does not render the invention obvious. *In re Haruna*, 249 F.3d 1327, 58 U.S.P.Q.2d 1517 (Fed. Cir. 2001).

The Examiner states that the AAPA has "...all of the elements of Applicant's invention, however, Applicant's invention rotates AAPA so as to have a vertical orientation of the openings and vertically spaced and longitudinally extending guide tabs that **allow for the vertical adjustment of the bolt to allow for the leveling of the trailer floor.**" (Office Action at page 4, paragraph 2, emphasis added.) The bolt of Applicant's invention that is referenced by the Examiner above is the pivot bolt that pivotally attaches the beam and axle to the bracket which in turn is attached to the frame of the vehicle. Applicant recites in amended Claim 1 "...said bracket sidewall openings each being generally elongated and vertically disposed, and **means for vertically moving said pivot bolt in said openings,** so that upon loosening of said nut on said

pivot bolt and selective adjustment of said pivot bolt movement means in a certain direction, **said pivot bolt, said beam, and said axle are vertically adjusted for transversely horizontally leveling said trailer floor.**" (Emphasis added.)

It is clear from the AAPA as well as the statement of the Examiner that the AAPA does not teach or suggest a vertical adjustment of the pivot bolt at the pivot to allow for the leveling of the trailer. Instead, the Examiner relies on the Lundin '359 Patent, which the Examiner says "disclose[s] a suspension arrangement (as best seen in Figures 3-5) that show[s] a **height adjustable suspension arm mount or bracket** having a vertical oval shaped opening (64) and a bolt (66) disposed in the opening and an eccentric collar (or washe[r]s) (74) that ...by rotating the bolt and due to the eccentricity of the washers/collars the suspension is raised or lowered." (Office Action at page 4, paragraph 3, emphasis and bracketed items added.) However, the Lundin '359 Patent does not teach or suggest a vertical adjustment of a pivot bolt and a beam capturing an axle at the pivot. More particularly, the height adjustable element of the Lundin '359 Patent includes a bolt 66 that is not a pivot bolt. Rather, it is a bolt that is located remote from pivot 32, and is disposed beneath a spring 20, wherein the spring rests directly on top of the shank of the bolt. (Lundin '359 Patent at column 4, lines 19-21.) The height adjustment means in the Lundin '359 Patent works indirectly on a transversely-extending control arm 26 by bearing directly on the spring, which in turn bears on the control arm that is pivotally attached at pivots 28 and 32:

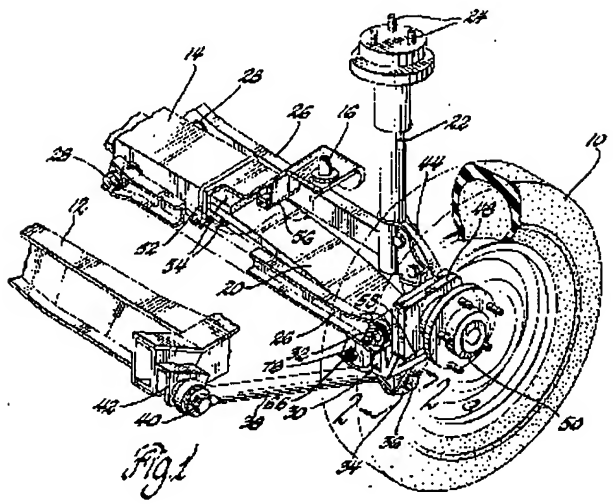

Fig. 1

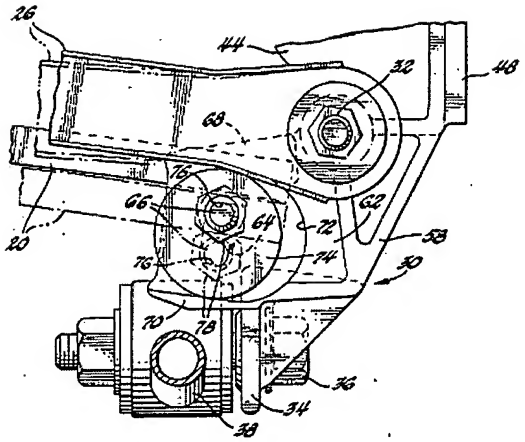

Fig. 4

It is this "bearing on the spring," and ultimately on the control arm, **remote from the pivot**, that causes the control arm to be raised and lowered in the Lundin '359 Patent. Thus, raising and lowering of the control arm is not accomplished by raising or lowering the pivot bolt at the pivot of the control arm, but rather by raising and lowering a spring that bears upon the control arm remote from the pivot. In fact, bolt 32 that pivotally attaches the control arm of the Lundin '359 Patent is fixed in such a manner as **to prohibit vertical adjustment within the pivot joint**. (See component 32 in FIG. 4 above.) Because the Lundin '359 Patent prohibits vertical adjustment at the pivot of a **transversely-extending** control arm, it does not teach or suggest the vertical adjustment of a pivot bolt and longitudinally-extending beam capturing an axle at the pivot as recited in amended Claim 1. In fact, Applicant respectfully submits that, because the Lundin '359 Patent discloses a non-height adjustable pivot, it teaches away from the invention recited in amended Claim 1, and therefore does not render the claimed invention obvious.

Moreover, Applicant respectfully submits that the Lundin '359 Patent cannot properly be combined with AAPA for a finding of obviousness. For a reference to be properly used as a basis of rejection, the reference must either be in the field of the applicant's endeavor, or if not,

then be pertinent to the particular problem with which the inventor was concerned. *See In re Oetiker*, 977 F.2d 1443, 1447, 24 U.S.P.Q.2d 1443, 1445 (Fed. Cir. 1992). If the reference is not in the field or is not pertinent to the problem, it cannot be combined with another reference and used as a basis for an obviousness rejection. *See id.* The Lundin '359 Patent is in a different field than that of Applicant's invention. That is, the Lundin '359 Patent is expressly directed to an automotive vehicle suspension (see col. 1, ll. 4-5), while the invention recited in amended Claim 1 is directed to an axle/suspension system for a trailer of a tractor-trailer. As known to those skilled in the tractor-trailer or heavy-duty vehicle art, an axle/suspension system for a trailer of a tractor-trailer experiences much higher and different loads than an automotive vehicle suspension, and therefore involves different structures to handle those loads. Indeed, some of those structural differences are described above. In addition, the Lundin '359 Patent is directed to solving a different problem than the problem which is solved by the invention recited in amended Claim 1. More particularly, the Lundin '359 Patent is directed to the problem of adjusting the height of an automobile via a transversely-extending control arm (col. 1, ll. 4-7), which Applicant submits is not pertinent to the problem of adjusting a longitudinally-extending beam and an axle of a trailer of a tractor-trailer for leveling a trailer floor, as recited in amended Claim 1. Since the Lundin '359 Patent is in a different field from the invention recited in amended Claim 1, and is not pertinent to the problem solved by the invention recited in amended Claim 1, Applicant respectfully submits that it may not be combined with another reference for a finding of obviousness, which thereby overcomes the rejection.

Based on the foregoing, Applicant respectfully submits that Claim 1, and Claims 2-6 depending therefrom, are not obvious over the AAPA in view of the Lundin '359 Patent. Therefore, Claims 1-6 are in condition for allowance.

Claims 1-6 Are Not Obvious Over AAPA in View of the AU '128 Patent.

The Examiner has also rejected Claims 1-6 under 35 USC 103(a) as being obvious over AAPA in view of the AU '128 Patent. As set forth above, the AAPA does not teach or suggest the vertical adjustment of a pivot bolt and a beam capturing an axle within the pivot of the suspension beam. (See argument *supra*.) In support of the unpatentability argument, the Examiner relies on the AU '128 patent. The Examiner states that:

> AU '128 discloses a suspension arrangement having plural longitudinal suspension arms (18, 19). The outer arm has a horizontal adjustment similar to the AAPA. The inner arm has a vertical adjustment. AU '128 teaches the adjustment of both horizontal and vertical adjustment and the ability to 'rotate' one (a horizontal) adjustment feature to provide for vertical adjustment.
>
> It would have been obvious to one of ordinary skill in the art at the time the invention was made... to rotate the horizontal opening and guide tab adjustment arrangement of AAPA so as to be vertical as taught by AU '128 so as **to provide vertical adjustment of a suspension element.**

(Office Action at pages 5-6, emphasis added.) However, the AU '128 Patent does **not** provide a vertical adjustment of the beam and transversely-extending axle of a heavy-duty vehicle that results in a height adjustment or leveling adjustment to the vehicle. The vertical adjustment of the AU '128 Patent adjusts the camber in the wheel attached to a stub axle of the vehicle. "This invention relates to the provision of camber and/or toe-in adjustment on trailing arm wishbone type suspensions, as used in trailers, caravans and boat trailer applications." (AU '128 Patent at page 1, lines 3-5.) Nothing in the AU '128 Patent teaches, suggests, or even implies that it could be used for raising or lowering a beam capturing an axle in order to transversely horizontally level the vehicle.

Therefore, because neither AAPA nor the AU '128 Patent teaches or suggests the structure nor the resulting vertical height adjustment recited in amended Claim 1, Applicant respectfully submits that the rejection is improper and should be withdrawn. As a result, Applicant respectfully submits that amended Claim 1, and Claims 2-6 depending therefrom, are not obvious over AAPA in view of the AU '128 Patent, and are in condition for allowance.

CONCLUSION.

Applicant was the first to recognize the advantages of combining a vertical height adjustment within the pivot of a leading or trailing-arm suspension system for a heavy duty vehicle in order to transversely horizontally level a trailer floor. By combining the elements as Applicant has, new and unexpected results have been achieved, mainly the ability to easily level the trailer of a heavy-duty vehicle through use of a height adjustment means contained within the pivot of a suspension beam.

The results produced by Applicant's invention have been long sought after by those skilled in the art, but up until Applicant's invention, the results have been unobtainable.

In view of the above, it is submitted that Claims 1-6 are now in condition for allowance. Reconsideration of the rejections and allowance of Claims 1-6 is, therefore, respectfully requested.

Respectfully submitted,

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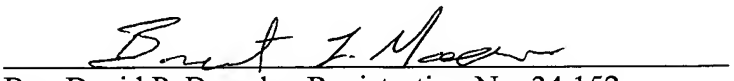

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